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TAGS: PREL KJUS SC SL  
SUBJECT: SPECIAL COURT FOR SIERRA LEONE: SECURITY COUNCIL  
SHOULD ESTABLISH RESIDUAL MECHANISM

REF: USUN 00040

Classified By: Ambassador Rice for Reasons 1.4(b) and 1.4(d)

1.(SBU) Summary. The Special Court for Sierra Leone is scheduled to wrap up its work in early 2011 with the conclusion of the Charles Taylor case. However, several "residual functions" will remain, such as management of the Court's archives, oversight of detention of the prisoners and ongoing witness protection responsibilities (see Reftel). The UK has proposed to USUN that the UN Security Council establish a residual mechanism for the Special Court, and that the residual mechanism be funded from UN assessed contributions. USUN strongly recommends that the Department support the UK's proposal. End summary.

2.(U) In 2000, the UN Security Council authorized the Secretary General to negotiate an agreement with the Government of Sierra Leone to establish the Special Court. The United States serves on the Management Committee of the Special Court, which is funded by voluntary contributions. (The United States has funded approximately forty percent of the Special Court's budget.) During this past year, the Management Committee has discussed both the residual functions that will need to be addressed beyond the life of the Court and the mechanism that will need to be established to handle these issues, which is estimated to cost a maximum of \$3 million a year. In the meantime, the Security Council's Informal Working Group on International Tribunals has been grappling with the establishment of a mechanism or mechanisms to handle residual functions after the completion of the Yugoslavia Tribunal's (ICTY) and Rwanda Tribunal's (ICTR) work.

¶3. (SBU) To date, the United States has taken the position that the residual mechanism for the Special Court for Sierra Leone should be established through negotiation between the United Nations and the Government of Sierra Leone, with heavy input from the Management Committee. The United States has also taken the position that the Special Court's residual mechanism should be funded by voluntary contributions only. The UK has approached USUN and proposed that a residual mechanism be established through the Security Council and that it be funded through UN assessed contributions. The UK has also made this proposal at the Management Committee itself.

¶4. (SBU) There are several compelling reasons for the Security Council to establish the residual mechanism and for the residual mechanism's budget to be funded by the UN budget.

¶5. (SBU) First, the United States currently provides approximately forty percent of the Court's budget, and would be expected to contribute a similar percentage to a residual mechanism. Funding the Court through assessed contributions, where the U.S. payment is capped at 22%, will yield a significant cost savings for the United States.

¶6. (SBU) Second, it has been extremely difficult to fund the Court itself through voluntary contributions, with the Court constantly facing shortfalls and financial crises, even during the high-profile Charles Taylor case. The residual mechanism will need to be in place at least fifty years, given the lengthy sentences of some of the prisoners. Funding the residual mechanism through voluntary contributions is simply not a realistic or viable option -- and could result in an ever-increasing burden on the United States. It is essential that this mechanism not run out of money, for release of these prisoners would constitute a failure of international justice. The only way to put the residual mechanism on a sound financial footing would be to fund it through UN assessed contributions.

¶7. (C) Third, the Government of Sierra Leone has been making unreasonable demands to house the residual mechanism, or major functions of it, in Sierra Leone. We fear that the Government of Sierra Leone may see the residual mechanism as a potential jobs program. We can circumvent the Government of Sierra Leone's leverage over the residual mechanism issue by placing the decision in the hands of the Security Council, and ending the bilateral UN-Sierra Leone negotiation.

¶8. (SBU) In sum, USUN strongly supports the UK's effort to shift the establishment of the Special Court for Sierra Leone's residual mechanism to the UN Security Council and to fund that residual mechanism through UN assessed contributions, and recommends that the Department support the UK's proposal.

¶9. (SBU) It is worth noting that it makes sense to establish one residual mechanism for all three courts - the Special

Court, the ICTY and the ICTR - or at least to have the Security Council address all three together. This could lead to a more efficient streamlined consolidated entity (or sub-entities), given that there are significant overlaps in the functions to be performed for the successor to each judicial body.

RICE